

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CIVIL ACTION NO. 3:10-CV-355-RJC-DCK**

**RICHARD A. CAPELL,**

**Plaintiff,**

**v.**

**MEMORANDUM AND  
RECOMMENDATION**

**NC DIVISION OF VOCATIONAL  
REHABILITATION SERVICES, PAMELA  
LLOYDE-OGOKE, M. TERRY HODGES,  
CHARLOTTE-MECKLENBURG HOSPITAL  
AUTHORITY d/b/a CAROLINAS MEDICAL  
CENTER, CINDY BOBAY and  
KEITH A SMITH,**

**Defendants.**

**THIS MATTER IS BEFORE THE COURT** on Defendant City of Charlotte, Charlotte Mecklenburg Police Department's "Motion To Dismiss" (Document No. 8) filed September 17, 2010, and "Defendant Carolinas Medical Center's Motion To Dismiss..." (Document No. 9) filed September 21, 2010. On or about the same date Defendants filed the instant motions to dismiss, *pro se* Plaintiff Richard A. Capell ("Plaintiff") filed an "Amended Complaint" (Document No. 10).

This matter has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b) and immediate review is appropriate. Having fully considered the record, the motions, and applicable authority, the undersigned will respectfully recommend that these motions to dismiss be denied as moot.

It is well settled that a timely-filed amended pleading supersedes the original pleading, and that motions directed at superseded pleadings may be denied as moot. Young v. City of Mount Ranier, 238 F. 3d 567, 573 (4th Cir. 2001)("The general rule .... is that an amended pleading

supersedes the original pleading, rendering the original pleading of no effect); Colin v. Marconi Commerce Systems Employees' Retirement Plan, 335 F.Supp.2d 590, 614 (M.D.N.C. 2004) (“Earlier motions made by Defendants were filed prior to and have been rendered moot by Plaintiffs' filing of the Second Amended Complaint); Turner v. Kight, 192 F.Supp. 2d 391, 397 (D.Md. 2002) (denying as moot motions to dismiss original complaint on grounds that amended complaint superseded original complaint).

Based on the foregoing, Plaintiff’s “Amended Complaint” (Document No. 10) supersedes the original “Complaint” (Document No. 1), and the earlier motions have been rendered moot by the Amended Complaint.

**IT IS, THEREFORE, RECOMMENDED** that Defendant City of Charlotte, Charlotte Mecklenburg Police Department’s “Motion To Dismiss” (Document No. 8) and “Defendant Carolinas Medical Center’s Motion To Dismiss...” (Document No. 9) be **DENIED AS MOOT**.

#### **NOTICE OF APPEAL RIGHTS**

The parties are hereby advised that pursuant to 28 U.S.C. § 636(b)(1)(C), and Rule 72 of the Federal Rules of Civil Procedure, written objections to the proposed findings of fact, conclusions of law, and recommendation contained herein may be filed within fourteen (14) days of service of same. Responses to objections may be filed within fourteen (14) days after service of the objections. Fed.R.Civ.P. 72(b)(2). Failure to file objections to this Memorandum and Recommendation with the District Court constitutes a waiver of the right to *de novo* review by the District Court. Diamond v. Colonial Life, 416 F.3d 310, 315-16 (4th Cir. 2005). Moreover, failure to file timely objections will preclude the parties from raising such objections on appeal. Diamond, 416 F.3d at 316; Page v. Lee, 337 F.3d 411, 416 n.3 (4th Cir. 2003); Snyder v. Ridenhour, 889 F.2d 1363, 1365 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140, 147-48 (1985), reh'g denied, 474 U.S. 1111 (1986).

The Clerk is directed to send copies of this Memorandum and Recommendation to the *pro se* Plaintiff, counsel for Defendants, and the Honorable Robert J. Conrad, Jr.

**IT IS SO RECOMMENDED.**

Signed: October 5, 2010

A handwritten signature in black ink, appearing to read "D.C. Keesler", is written over a horizontal line.

David C. Keesler  
United States Magistrate Judge

